

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.  
2019 MAY -6 PM 2:03

CALVIN JAMES,

Petitioner,

v.

U.S. MARSHAL,

Respondent.

CASE NO. CV419-062

O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 3), to which objections have been filed. (Doc. 4). In the Report and Recommendation, the Magistrate Judge recommended dismissal of Petitioner's petition under 28 U.S.C. § 2254, construed as a motion under 28 U.S.C. § 2255, because Petitioner had not yet been sentenced and had not had any opportunity to file a direct appeal. (Doc. 3.) In his objections, Petitioner requests that the Court allow him to forgo his right to a direct appeal and allow him to proceed with his § 2255 petition. (Doc. 4.) Despite his assertions, however, Petitioner has an active direct appeal with the United States Court of Appeals for the Eleventh Circuit. (See CR418-205, Doc. 69; Doc. 71.) As discussed in the Report and Recommendation, collateral relief under 28 U.S.C. § 2255 and direct-appeal relief cannot be pursued simultaneously. See United States v. Casaran-Rivas, 311 F. App'x 269, 273 (11th Cir. 2009) ("Likewise, the reasoning cited by the

courts who have held that collateral relief and direct-appeal relief cannot be pursued simultaneously, namely that the disposition of a direct appeal might render a habeas motion unnecessary, applies with equal force to pursuing habeas relief before direct-appeal relief.").

Accordingly, the Report and Recommendation is **ADOPTED** as the Court's opinion in this case.<sup>1</sup> Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**. As a result, Petitioner's Motion for Leave to Proceed in Forma Pauperis (Doc. 5) is **DISMISSED AS MOOT**. In addition, Petitioner is not entitled to a Certificate of Appealability, rendering moot any request to proceed in forma pauperis on appeal. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 6<sup>th</sup> day of May 2019.



WILLIAM T. MOORE, JR.  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

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<sup>1</sup> At the time that the Magistrate Judge issued the Report and Recommendation, Petitioner had not yet been sentenced. Petitioner, however, was sentenced on April 9, 2019. (CR418-205, Doc. 67.) Accordingly, his petition is not dismissed because it was improperly filed before his sentencing. Instead, his petition is dismissed at this time due to Petitioner's ongoing direct appeal.